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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,789	06/22/2001	Michael P. Whitman	11443/56	7650
110	7590	02/24/2005	EXAMINER	
DANN, DORFMAN, HERRELL & SKILLMAN 1601 MARKET STREET SUITE 2400 PHILADELPHIA, PA 19103-2307			LOPEZ, MICHELLE	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/887,789

Applicant(s)

WHITMAN ET AL.

Examiner

Michelle Lopez

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 20-31 and 34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-31 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 05/20/04, 06/21/04.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to the amendment filed on December 02, 2004.
2. Claims 1-19, 32-33, and 35-41 have been canceled.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 20-26, 28-31, 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilk (5,330,486).

Wilk discloses a method for performing a procedure on a body, comprising the steps of:

(a) providing a hollow shaft 216 having a distal free end without any surgical instrument supported on the distal free end, the hollow shaft having a diameter and containing a drive shaft 220 rotatably disposed therein, the distal free end of the hollow shaft configured to permit a surgical instrument to be mounted to the distal free end of the hollow shaft; (b) inserting the hollow shaft in the body via a first body orifice; (c) inserting a surgical instrument 222 into the body via a second body orifice, the surgical instrument including a coupling complimentary to and configured to couple with the distal free end of said hollow shaft to connect the drive shaft with the surgical instrument in operable communication; and (c) coupling the hollow shaft and the surgical instrument via the coupling to mount the surgical instrument to the distal end of the hollow shaft after the steps of inserting the hollow shaft and inserting the surgical instrument as shown in Fig. 10, and col. 13; 52-68.

With respect to claim 21, Wilk teaches wherein the hollow shaft and the surgical instrument are coupled in the coupling step intracorporeally as shown in Fig. 10.

With respect to claim 22, Wilk teaches the step of forming a surgical procedure after the coupling step as described in column 14 lines 12-43.

With respect to claim 23 and 24, Wilk teaches wherein the surgical procedure includes a tissue stapling and cutting procedure.

With respect to claim 25, Wilk teaches wherein the surgical procedure includes an anastomosis procedure as disclosed in the Abstract.

With respect to claim 26, Wilk teaches wherein the surgical instrument includes at least one of a surgical stapler instrument, a surgical stapler and cutter instrument and an anastomosis instrument.

In reference to claim 28, Wilk teaches wherein the first orifice includes at least one of a natural orifice, an incision, and a cannula.

In reference to claim 29, Wilk teaches wherein the second orifice includes at least one of a natural orifice, an incision, and a cannula.

In reference to claim 30, Wilk teaches wherein each of the first orifice and the second orifice includes at least one of a natural orifice, an incision and a cannula.

With respect to claim 31, Wilk teaches wherein the first orifice is different from the second orifice as seen in Figure 10.

With respect to claim 34, Wilk teaches a quick connect fitting 218 having a fitting diameter substantially equal to the hollow shaft diameter.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilk (5,330,486) in view of Wilk (5,314,436).

Wilk'486 discloses the invention substantially as claimed, except for the step of withdrawing the coupled hollow shaft and surgical instrument via the first orifice.

However, Wilk'436 teaches wherein the hollow shaft and the first surgical instrument coupled to the hollow shaft are configured to be withdrawn from the body via a first orifice as described in column 4, lines 26-40 for the purpose of ease removal.

Therefore, it would have been obvious to one having ordinary skill in the art to provide a modified method of removal in order to increase convenience.

***Response to Arguments***

5. Applicant's arguments have been fully considered but they are not deemed persuasive. Applicant contends that Wilk'486 does not show or suggest the features of claim 20 as amended. However, as explained above in paragraph no. 3, Examiner contends that Wilk'486 does show every feature as disclosed in amended claim 20.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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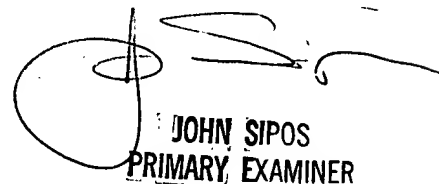
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 571-272-4464. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JOHN SIPOS  
PRIMARY EXAMINER